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Name of Registered Representative:

John C. Freeman, Registration No. 34,483

September 8, 2003

Date of Signature

**PATENT
CASE NO. 56/350**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application:)
Erich Strasser)
Serial No.: 09/835,293)
Filed: April 13, 2001)
For: METHOD AND DEVICE FOR)
DETECTION OF OSCILLATIONS)
BY A POSITION MEASURING)
SYSTEM)

) Group Art Unit: unassigned
Examiner: unassigned
RECEIVED
SEP 10 2001
OFFICE OF THE
PATENT, TRADEMARK AND
COPRIGHT OFFICE

**PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT
OR, IN THE ALTERNATIVE, PETITION UNDER
37 CFR § 1.137(b) FOR REVIVAL OF ABANDONED APPLICATION**

Mail Stop Petition
Commissioner for Patents
Washington, D.C. 20231
Attn: Office of Petitions
Petitions Information
Crystal Park One, Suite 520

2013/03/20 00:00:03 231925 09835293

22-2294453

1300.00 pp

Dear Sir:

**I. PETITION FOR WITHDRAWAL OF HOLDING OF ABANDONMENT
BASED ON FAILURE TO RECEIVE NOTICE OF MISSING PARTS**

On July 7, 2003, your Petitioner received a Notice of Abandonment under 37 CFR 1.53(f) or (g) ("Notice of Abandonment"). The Notice of Abandonment asserted that the above-mentioned application (hereinafter "the '293 application") was deemed "abandoned for failure to timely or properly reply to the Notice to File Missing Parts (Notice) mailed on June 11, 2001. However, your Petitioner never received the Notice to File Missing Parts mentioned in the Notice of Abandonment. Since your Petitioner never received the original Notice of Missing Parts, your Petitioner requests that the holding of abandonment be withdrawn. MPEP § 711.03(c).

As mentioned in MPEP § 711.03(c), "an allegation that an Office Action was not received may be considered as a petition for the withdrawal of the holding of abandonment. If the allegation is adequately supported, the petition may be granted and a new Office action mailed." This section equally applies to the non-receipt of a Notice of Allowance as held in the case Delger, Inc. v. Schuyler, 172 USPQ 513 (D.D.C. 1971). While a Notice of Missing Parts is not an Office Action or a Notice of Allowance per se, it is an official paper sent by the U.S. Patent Office that requires a timely reply from the Applicant in order to

avoid abandonment of the application. Accordingly, your Petitioner believes that MPEP § 711.03(c) equally applies to the non-receipt of a Notice of Missing Parts. Based on this belief, your Petitioner petitions that the holding of abandonment of the '293 application be withdrawn for the reasons set forth below.

A review of certain events occurring on or after July 7, 2003 reveals that your Petitioner never received the Notice of Missing Parts for the '293 application. In particular, after receiving the Notice of Abandonment, the undersigned searched his firm's files regarding the '293 application and did not find the Notice of Missing Parts.

In addition, on or after July 7, 2003 the undersigned searched and reviewed the docket record of his firm regarding papers received from the U.S. Patent Office regarding the '293 application. That search showed that the Notice of Missing Parts was not received by the undersigned's firm. For example, the search revealed that the daily, manually entered log of the undersigned's firm did not contain an entry for August 11, 2001¹ for client matter 56/350 (see Exhibit A), which is the client matter for the '293 application².

¹ August 11, 2001 is the initial due date for the Notice of Missing parts mailed on June 11, 2001.

² Note that the log identified as Exhibit A has been redacted so as to delete references to the identity of litigation matters, the identity of inventors and attorneys and comments not related to receipt of papers from the U.S. Patent Office.

Furthermore, the search revealed that the undersigned's firm's patent database failed to show an entry indicating that the Notice of Missing Parts had been received (see Exhibit B)³.

Based on the review of the files regarding the '293 application, the log (Exhibit A) and the patent database (Exhibit B), the evidence shows that the Notice of Missing Parts was never received by your Petitioner. Accordingly, the present Petition for Withdrawal of Holding of Abandonment should be granted.

II. ALTERNATIVE PETITION UNDER 37 C.F.R. § 1.137(b)

Should the above Petition for Withdrawal of Holding of Abandonment not be granted, your Petitioner requests that, in the alternative, the present Petition be treated as being based upon 37 C.F.R. § 1.137(b) for unintentional abandonment. Accordingly, your Petitioner hereby declares that the abandonment of the above-mentioned application was unintentional on his part. In addition, your Petitioner declares that the entire delay in filing a response to the Notice of Missing Parts from its due date of August 11, 2001 to the date of the filing of a grantable Petition under 37 C.F.R. § 1.137(b) was unintentional.

There is evidence that the abandonment was unintentional. As mentioned above, your Petitioner never received the Notice of Abandonment. This is conclusive evidence that

³ Note that the entry "US-INCOMPLETE APPLICATION/MISSING PARTS NOTICE" at the top of page 2 is a reminder that the Notice of Missing Parts was not received.

there was no intent to abandon the above-mentioned application.

Based on the facts above, your Petitioner submits that he has shown that the abandonment of the above-mentioned application was unintentional. Therefore, your Petitioner respectfully petitions the Commissioner to revive the above-mentioned application. Your Petitioner is including: (1) the petition fee of \$1,300.00 as required under 37 C.F.R. § 1.17(m), (2) a copy of a Declaration and Power of Attorney for the '293 application, and (3) a check for \$ 894.00 to cover the payment of the filing fee of \$ 710.00, the extra claim fee of \$ 54.00 for three additional claims and the surcharge of \$130 as required under 37 C.F.R. § 1.137(b)(1)⁴. Items (2) and (3) are being filed in response to the Notice of Missing Parts. Should there be other items that need to be filed in response to the Notice of Missing Parts, your Petitioner requests that the items be identified and additional time to supply the items since your Petitioner does not have a copy of the Notice of Missing Parts. Your Petitioner also requests a copy of the Notice of Missing Parts be supplied so that the file of the Petitioner's '293 application can be updated. The undersigned requests that his firm's deposit account no. 23-1925 be charged for any deficiencies in the above fees.

⁴ The check for \$894.00 reflects the filing fees and surcharge due as of August 11, 2001, the initial due date for the Notice of Missing parts mailed on June 11, 2001. No Petition for an Extension of Time is being filed at this time since no Notice of Missing Parts was ever received. If such a Petition is required, then the undersigned petitions for the extension of time and authorizes payment of the extension fee from his firm's deposit account no. 23-1925.

Furthermore, the facts submitted previously show that the Notice of Missing Parts was never received by your Petitioner. Accordingly, your Petitioner requests that the Petition fee under 37 C.F.R. § 1.17(m) and any other fees incurred due to the failure to receive the Notice of Missing Parts be refunded to the Brinks Hofer firm, since the Brinks Hofer firm is not at fault in any way for the failure of the United States Postal Service to properly deliver the mail.

Respectfully submitted,



John C. Freeman
Registration No. 34,483
Attorney for Petitioner

BRINKS HOFER
GILSON & LIONE
P.O. Box 10395
Chicago, Illinois 60610
(312) 321-4200

Dated: September 8, 2003

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SEP 15 2003

OFFICE OF PETITIONS

2001

Saturday 11 August

223/143

6555/234 -

- file US & Foreign based on Prov. -

final

7828/23-

proposed

closed

7828/23

9795/9-

FINAL

5847/12-

Transferred
- Amendment -

10512/6 -

- Amendment -

10406/6 -

- Amendment + Drawings -

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9584/3-

- Amendment -

SEP 1 5 2003

OFFICE OF PETITIONS

9281/3505 -

- \$1240 + Formal Drawings -

7034/87-

- \$1240 + Formal Drawings -

9281/3585-

- Issue fee \$1240 -

9281/3564 -

- FINAL AMENDMENT -

115/434 -

- FINAL AMENDMENT -

10541/30-

- FINAL AMENDMENT -

9281/4143 - file US App. -

- Final

9281/4144 - file US App. -

- Final

9281/4150 - file US App. - GS FINAL

10367/1711-Tm; Touch Select- Response Due: Final

742/215- IDS

742/217- IDS

8700/188-

9333/272- IDS

1391/1499 - Amendment & Late fee (4th mo)

3716/98 - Amendment & Late fee (4th mo) & Sub. of Interview

9281/3091 - Amendment & Late fee (4th mo)

9281/3596 - Amendment & Late fee (4th mo)

56/354 - filing fee, Add. claims fee, surcharge & late fee (3rd mo)

7814/44 - filing fee, Add. claims fee, signed dec., surcharge & late fee (4th mo)

10420/15 - IDS

10541/385 - Provisional - Final

9683/99 - Declaration & Late fee (4th mo)

10541/560 - Provisional - Final

10541/501 - Provisional - Final

9281/4176 - file US App. - Final

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SEP 1 5 2003

9281/4190 - file US App.

Final

OFFICE OF PETITIONS

9281/4139 - file US App. - Final

Final

2001
223/143

Saturday 16 August

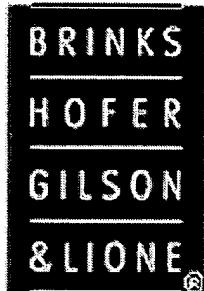
10822/9 - ~~Amendment + late fee (4^{1/4} Mbx) -~~

5935/56 - IDS -

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SEP 1 5 2003

OFFICE OF PETITIONS



Patent: 56-350, United States, Regular, National, Original

Patent Data

Docket Number	56-350
Country	United States
Case Type	Regular
Relation Type	Original Filing
Filing Type	National
Filing Number	
Status	Filed
Sub Status	Pending
Parent Country	
Patent Family	
Application Number	09/835,293
Patent Number	
Publication Number	
Pay Maint Fee	Yes
Customer Code	

Supervising Atty	John C. Freeman
Agent	John C. Freeman
Agent	
Client	HEIDENHAIN GMBH, DR. JOHANNES
Assignee	
Reference Number	56-350
First Filing Date	04/13/2001
Sub Status Date	
Parent Filing Date	
Parent Grant Date	
Application Date	04/13/2001
Issue Date	
Publication Date	
Client Ref No	0967-US/Pr

Title

MEHTOD AND DEVICE FOR VIBRATION DETECTION TO GO WITHA POSITION MEASURING SYSTEM

Remarks

IDS MEMO SENT WITHOUT FILE ON 5-30-2001 BASED ON FOREIGN APPL. 100 18 298.4 FILED 4/13/2000

Actions

Actions

Action	Base Date	Action Due Date	Indicator	Completed Date	Postcard/Resp Sent Dt	Notes
US-ABANDONMENT NOTICE	07/07/2003					
File By Due Date-USA	04/13/2000	05/13/2000	Reminder	04/13/2001		US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File By Due Date-USA	04/13/2000	06/13/2000	Reminder	04/13/2001		US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION
File RCT	04/13/2000	06/13/2000	Reminder			US-APPLICATION FILED / FILING RECEIPT
File By Due Date-USA	04/13/2000	07/13/2000	Reminder	04/13/2001		US-FOREIGN APPLN. PRIORITY / FILE US

Notice Of Missing Parts	04/13/2000	07/13/2000	Reminder		PRIORITY / FILE US APPLICATION	
File By Due Date-USA	04/13/2000	08/13/2000	Reminder	04/13/2001	US-INCOMPLETE APPLICATION / MISSING PARTS NOTICE	
File By Due Date-USA	04/13/2000	09/13/2000	Reminder	04/13/2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date-USA	04/13/2000	10/13/2000	Reminder	04/13/2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date-USA	04/13/2000	11/13/2000	Reminder	04/13/2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date-USA	04/13/2000	12/13/2000	Reminder	04/13/2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date-USA	04/13/2000	01/13/2001	Reminder	04/13/2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date-USA	04/13/2000	02/13/2001	Reminder	04/13/2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date-USA	04/13/2000	03/13/2001	Reminder	04/13/2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date-USA	04/13/2000	04/13/2001	Final	04/13/2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
Office Action Received?		04/13/2000	06/13/2001	Reminder	US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
Office Action Received?		04/13/2000	07/13/2001	Reminder	US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
Information Disclosure Statement	04/13/2001	07/13/2001	IDC - CPI Gen.	07/06/2001	07/09/2001	IDS
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Office Action Received?	04/13/2000	09/13/2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
Office Action Received?	04/13/2000	10/13/2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
Office Action Received?	04/13/2000	11/13/2001	Due Date		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
US-Frn. Fil. Letter		12/13/2001				
Action Due	04/13/2001	12/13/2001	IDC - CPI Gen.	04/13/2001	FFL	
US-Foreign Convention - Utility		04/13/2002				
Foreign Filing Completed By	04/13/2001	04/13/2002	IDC - CPI Gen.	04/13/2001	FRN CONV	
Published		10/13/2002				
Office Action Received?		06/30/2003				
Office Action Received?		07/30/2003				
US-PETITION TO REVIVE		08/07/2003				
US-PETITION TO		09/07/2003				

REVIVE (FINAL)

Office Action
Received?

09/13/2003 Reminder

Inventors

Inventor Name Assignment Date
STRASSER, ERICH

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KXPP - Patent: MEHTOD AND DEVICE FOR VIBRATIO

Docket Number	56-350	CreateUser	conv
Country	United States	CreateDate	Sep 7 2002
Case Type	Regular	UpdateUser	jrodrigu
Relation Type	Original Filing	UpdateDate	Jul 15 2003
Filing Type	National	Responsible Atty	John C. Freeman
Application Date	Apr 13 2001	Client	HEIDENHAIN
Application Number	09/835,293	First Filing Date	GMBH, DR.
Supervising Atty	John C. Freeman	Sub Status	JOHANNES
Total Claims	0	ValidationUser	Apr 13 2001
Ind. Claims\Designs	0	ValidationDate	Pending
Status	Filed		jrodrigu
Reference Number	56-350		Jul 15 2003
Office Location	Chicago		
Pay Maint Fee	Yes		
Client Ref No	0967-US/Pr		

Actions

Action	Base Date	Action Due Date	Indicator	Completed Date	Notes	Postcard/Resp Sent Dt
US-ABANDONMENT NOTICE	Jul 7 2003					
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File By Due Date-USA	Apr 13 2000	Jun 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File RCT	Apr 13 2000	Jun 13 2000	Reminder		US-APPLICATION FILED / FILING RECEIPT	
File By Due Date-USA	Apr 13 2000	Jul 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
Notice Of Missing Parts	Apr 13 2000	Jul 13 2000	Reminder		US-INCOMPLETE APPLICATION / MISSING PARTS NOTICE	

File By Due Date-USA	Apr 13 2000	Aug 13 2000	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
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File By Due Date-USA	Apr 13 2000	Jan 13 2001	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
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File By Due Date-USA	Apr 13 2000	Mar 13 2001	Reminder	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
File By Due Date-USA	Apr 13 2000	Apr 13 2001	Final	Apr 13 2001	US-FOREIGN APPLN. PRIORITY / FILE US APPLICATION	
Office Action Received?	Apr 13 2000	Jun 13 2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
Office Action Received?	Apr 13 2000	Jul 13 2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
Information Disclosure Statement	Apr 13 2001	Jul 13 2001	IDC - CPI Gen.	Jul 6 2001	IDS	Jul 9 2001
Office Action Received?	Apr 13 2000	Aug 13 2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	

Office Action Received?	Apr 13 2000	Sep 13 2001	Reminder		US-FILING DATE / FIRST PTO ACTION PRINTED 7-13-2001	
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US-Frn. Fil. Letter		Dec 13 2001				
Action Due	Apr 13 2001	Dec 13 2001	IDC - CPI Gen.	Apr 13 2001	FFL	
US-Foreign Convention - Utility		Apr 13 2002				
Foreign Filing Completed By	Apr 13 2001	Apr 13 2002	IDC - CPI Gen.	Apr 13 2001	FRN CONV	
Published		Oct 13 2002				
Office Action Received?		Jun 30 2003				
Office Action Received?		Jul 30 2003				
US-PETITION TO REVIVE		Aug 7 2003				
US-PETITION TO REVIVE (FINAL)		Sep 7 2003				

Remarks**Text**

IDS MEMO SENT WITHOUT FILE ON 5-30-2001 BASED ON FOREIGN APPL. 100 18 298.4
FILED 4/13/2000

Inventors

Inventor Name
STRASSER, ERICH

Title**Text**

MEHTOD AND DEVICE FOR VIBRATION DETECTION TO GO WITHA POSITION
MEASURING SYSTEM

File Tracking

File Given To	Date Given
JCF	Jul 15 2003

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